vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5505 OF 1995

Shaila Arun Limye ... Petitioner

V/s.

State of Maharashtra & Ors. ... Respondents

Mr.M.P. Vashi for Petitioner

Mr.C.R. Sonawane for Respondent Nos.1 and 2

Mr.S. Talekar with Rodrigues for Respondent No.3

Mr.V.P. Vaidya for Respondent No.5

CORAM: **S.B. MHASE &**
SMT.NISHITA MHATRE, JJ.

DATED: **FEBRUARY 7, 2007**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Petition has been filed challenging the circular issued by Respondent No.1 on 25.11.2004 which according to the Petitioner is violative of Articles 14, 16 and 21 of the Constitution of India. The Petitioner has also sought appointment to the post of Librarian in the Respondent No.4 college run by Respondent No.5 society. During the pendency of this writ petition, the Petitioner has retired and therefore, has limited the reliefs claimed in the writ petition. She now seeks

that the respondents be directed to pay monetary benefits to her on the basis that she would have been entitled to be appointed as a Librarian from 1.8.1995 and would have retired as such.

2. The facts giving rise to the present writ petition are not in dispute. The Petitioner was appointed as a Junior Clerk with Respondent No.4 in 1974. After a period of two years of service, she was confirmed in the post of Junior Clerk with Respondent No.4. In 1982, the Petitioner graduated in Library Science and was promoted as an Assistant Librarian in the college by a letter dated 16.4.1983. The Petitioner was promoted to the post of Assistant Librarian w.e.f. 1.8.1982. She later passed her Masters degree in Library Science with a higher second class.

3. According to the Petitioner, there was only one post of Assistant Librarian and one post for a Librarian in the college. She was often required to officiate in the post of Librarian as and when the Librarian proceeded on leave. It appears that after the Librarian retired on 13.7.1995, the College advertised the post and sought candidates from the reserved category. The Petitioner protested against the issuance of the advertisement and requested the College to appoint her

as the Librarian. The Petitioner contended that the Librarian's post was an isolated post and therefore, there was no question of there being any reservation for that post. As her request to the College went unheeded, the Petitioner preferred the present writ petition.

4. The Government Resolution dated 25.11.1994 provides that where educational institutions are running more than one College, the Institutions were required to combine all posts in the category from all the colleges and decide the number of posts to be reserved for backward communities. The Petitioner has challenged this resolution as being ultra vires the Articles 14, 16 and 21 of the Constitution of India. However, after retirement the Petitioner has not pressed the challenge in respect of this Government Resolution. She insists however, that although she cannot now be ordered to be appointed as a Librarian she would be entitled to monetary benefits as if she had been appointed as a Librarian from 1.8.1995. This challenge in our view, is unsustainable. Once an advertisement had been issued in accordance with the Government Resolution dated 25.11.1994 it was always open for the College to select a candidate who suited the qualifications required under the advertisement. In our opinion, therefore, the Petitioner cannot as a matter of right be entitled to be

promoted as a Librarian from 1.8.1995 when the post fell vacant.

5. The Petitioner then contends that in any event she ought to have been continued in the post of the Assistant Librarian till the age of 60 years. Thus, she would be entitled to her salary for another two years and payment of pension accordingly. According to the Petitioner, an Assistant Librarian is a ‘teacher’ under section 2(34) of the Maharashtra Universities Act (for short, the Act). A teacher is entitled to continue in service upto the age of 60 years and thus, she ought to be paid salary till she attained the age of 60 years.

6. Section 2(34) reads as under:

> 2(34) "teacher" means full-time approved professor, associate professor, assistant professor, reader, lecturer, librarian, principal, deputy or assistant librarian and documentation officer in the university and college librarian, Director or instructor of physical education in any university department, conducted, affiliated or autonomous college, autonomous institution or department or recognised institution in the university;

7. In our view, by the amendment to the Act introduced by the Maharashtra Act 55 of 2000 inserted on 12.5.2001, the word "Librarian" contained in the definition of ‘teacher’ under section 2(34) of the Act,

is qualified by the use of the words "principal, deputy or assistant librarian and documentation officer in the University and college librarian". The definition does not therefore, cover the Assistant Librarian of a College. Had that been the intention of the Legislature, there would have been no need to mention "College Librarian" separately. In fact, the Legislature has thought it fit to distinguish between an Assistant Librarian of the University and an Assistant Librarian of a College. Although the Assistant Librarian of a University has been covered by the definition of teacher, the Assistant Librarian of a College has been advisedly not been included in the definition. Reading the definition of "teacher" in any other manner would do violence to the definition of "teacher" as contained in the Act. In our opinion, therefore, the Petitioner is not entitled to be considered a "teacher" as she was employed as an Assistant Librarian of a College and not a University.

8. Thus, the Petitioner could not have been permitted to continue in the college upto the age of 60 years as submitted on her behalf. In the result, the Petition fails. Petition is dismissed. Rule discharged. No costs.

(NISHITA MHATRE, J.) (S.B. MHASE, J.)